FILE COPY

Office-Supreme Court, U.S.
FILED
JAN 6 1965
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. [redacted] 43

COLGATE-PALMOLIVE COMPANY,
Petitioner,

vs.

COOK CHEMICAL COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

GEORGE H. MORTIMER,
300 Park Avenue,
New York, New York 10022,
HOWARD A. CRAWFORD,
JACK W. R. HEADLEY,
15 West Tenth Street,
Kansas City, Missouri 64105,
Attorneys for Petitioner.

Of Counsel:

LATHROP, RIGHTER, GORDON & PARKER,
15 West Tenth Street,
Kansas City, Missouri 64105.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No.

COLGATE-PALMOLIVE COMPANY,
Petitioner,

vs.

COOK CHEMICAL COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Colgate-Palmolive Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in the above-entitled case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 336 F.2d 110. The opinion of the District Court for the Western District of Missouri is reported at 220 F. Supp. 414.

JURISDICTION

The judgment of the Court of Appeals was entered on August 21, 1964. A timely Petition for Rehearing En Banc was denied on October 9, 1964. The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1254(1). The basis of jurisdiction in the District Court was 28 U.S.C., Secs. 1338(a) and 2201.

STATEMENT

There is now before this Court a Petition filed on December 22, 1964, under No. 778 by Calmar, Inc., for a Writ of Certiorari to the same Court to review the same judgment. The two actions, Calmar, Inc., v. Cook Chemical Company and Colgate-Palmolive Company v. Cook Chemical Company, were consolidated for trial in the District Court for the Western District of Missouri (see page 15 of the printed Record prepared for the Court of Appeals and filed with this Court in Calmar, Inc., v. Cook Chemical Company) and the District Court entered one judgment against both plaintiffs (R. 36, filed with this Court in Calmar, Inc., v. Cook Chemical Company). The two actions were consolidated on appeal to the Court of Appeals for the Eighth Circuit which handed down a single opinion and entered one judgment affirming the judgment of the District Court. (Appendix C, page 12a of the Petition for a Writ of Certiorari filed by Calmar, Inc.)

The device found by the Court of Appeals to infringe Respondent's patent is a pump-type liquid sprayer with hold-down cap which is produced by Calmar, Inc., and which was sold by it to Colgate-Palmolive Company and used and resold by Colgate. Thus the device forming the basis of Respondent's counterclaim for infringement against Calmar, Inc., and the device forming the basis of Respondent's counterclaim against Colgate are one and the same.

The questions presented for review, the constitutional provision and statutes involved, the facts and the reasons for granting the writ are the same in this case as in Calmar, Inc., v. Cook Chemical Company.

While Colgate-Palmolive Company has been represented by its own counsel in the District Court and in the Court of Appeals, it has relied upon the presentations made by Calmar, Inc's. counsel, has adopted as its own the evidence adduced at the trial by Calmar, Inc., and has joined in or adopted as its own the notice of appeal, briefs and motions filed with the Court of Appeals by Calmar, Inc. It would only unduly burden this Court for the petitioner to repeat the petition of Calmar, Inc., heretofore filed.

Therefore, this petitioner adopts and incorporates herein by reference the statement of the questions presented for review, the constitutional provision and statutes involved, the facts and the reasons for granting the writ set out in the Petition of Calmar, Inc., for a Writ of Certiorari heretofore filed under No. 778, together with appendices attached thereto and, for the reasons therein stated, submits that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

GEORGE H. MORTIMER,
300 Park Avenue,
New York, New York 10022,
HOWARD A. CRAWFORD,
JACK W. R. HEADLEY,
15 West Tenth Street,
Kansas City, Missouri 64105,
Attorneys for Petitioner.

Of Counsel:

LATHROP, RIGHTER, GORDON & PARKER,
15 West Tenth Street,
Kansas City, Missouri 64105.